

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

OLIN CORPORATION,

Plaintiff,

v.

DECISION AND ORDER

E.I. DUPONT DE NEMOURS AND COMPANY,
and NATIONWIDE BOILER, INC.

05-CV-100S(Sc)

Defendants.

1. On May 22, 2006, Defendant Nationwide Boiler, Inc. ("NBI") moved for summary judgment, seeking dismissal of this action in its entirety.¹ In response to NBI's Motion, Plaintiff Olin Corporation ("Olin") filed a response to NBI's Local Rule 56.1 statement of undisputed facts and an opposing memorandum of law with attached exhibits.

2. On September 22, 2006, NBI filed objections to the documents appended to Olin's opposing memorandum (Docket No. 54) on the ground that they were not presented to the Court through an affidavit made on personal knowledge as required by Federal Rule of Civil Procedure 56(e) and Local Rule of Civil Procedure 7.1(e). NBI requests that this Court strike all unauthenticated documents filed at Docket Nos. 52 and 53.

3. In response, on September 26, 2006, Olin moved for leave to file a certifying affidavit. (Docket No. 58.)

4. As Local Rule 7.1(e) clearly states, a party opposing a motion filed pursuant to Federal Rules of Civil Procedure 12, 56 or 65(a) "shall file and serve with the papers in

¹ Defendant E.I. DuPont de Nemours and Company was dismissed from this action on March 27, 2005.

opposition to the motion an answering memorandum and a supporting affidavit.” Thus, this Court disagrees with Olin’s suggestion that there is “some room for disagreement about the necessity of such an affidavit under the circumstances.” The Local Rule is clear, unambiguous and mandatory. Nevertheless, Olin’s lapse is one that is readily corrected and this Court declines to impose the drastic remedy requested by NBI. Accordingly, Defendant NBI’s Objections and request to strike (Docket No. 54) are DENIED, and Plaintiff Olin’s Motion for Leave to file a certifying affidavit (Docket No. 58) is GRANTED.

5. Plaintiff Olin Corporation is directed to file the affidavit appended as Exhibit A to Docket No. 58 no later than **October 13, 2006**.

6. Oral argument on NBI’s Motion for Summary Judgment hereby is scheduled for November 6, 2006 at 11:00 a.m..

SO ORDERED.

Dated: October 6, 2006
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge